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Supreme Court, U.S.
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In The

Supreme Court of the United States

CONTINENTAL PET TECHNOLOGIES, INC.,

Petitioner,

v.

JUANA SANDOVAL PALACIAS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

PETITION FOR WRIT OF CERTIORARI

WARNER R. WILSON, JR.
Counsel of Record
WILSON & EPSTEIN LLC
1850 North Tower
235 Peachtree Street
Atlanta, GA 30303
404-739-5000
404-739-5002 fax
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether an illegal alien is prohibited from being an "employee" under the Georgia Workers' Compensation statutes as preempted by the provisions of the Immigration Reform and Control Act of 1986?

LIST OF PARTIES
[Contained in Caption]

AND

CORPORATE DISCLOSURE

Corporation:	Continental Pet Technologies, Inc.
Parent corporation:	Owens-Illinois, Inc.
Publicly-held company owning at least 10%:	N/A

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CITATIONS OF OPINIONS AND ORDERS

Continental Pet Technologies, Inc. v. Palacias, 269 Ga. App. 561; 604 S.E.2d 629 (2004) [A-1]. The opinions of the Superior Court of Bartow County, Georgia [Appendix]; the Georgia State Board of Workers' Compensation [Appendix]; and the Administrative Law Judge for the Georgia State Board of Workers' Compensation [Appendix] are unreported.

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on September 13, 2004. A petition for certiorari to the Supreme Court of Georgia was denied on February 21, 2005. A motion for reconsideration of the denial of the petition for certiorari to the Supreme Court of Georgia was denied on March 28, 2005. A notice of intention to petition for certiorari to the Supreme Court of the United States was filed on April 4, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS/ STATUTES INVOLVED

Constitution of the United States Amendment VI, Cl. 2 (Supremacy Clause):

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing

in the Constitution or Laws of any State to the Contrary notwithstanding.

Immigration Reform and Control Act of 1986 ["I.R.C.A."], 8 U.S.C.S. §§ 1324a and c(a)(2).

8 C.F.R. § 274a.

O.C.G.A. § 34-9-1(2).

STATEMENT OF THE CASE

COMES NOW CONTINENTAL PET TECHNOLOGIES, INC. and respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of the State of Georgia.

Statement of Facts

Juana Sandoval Palacias ("Respondent") was employed as a maintenance worker by Continental Pet Technologies, Inc. ("Petitioner") in Cartersville, Georgia when she reported to Petitioner an unwitnessed accident. On investigation, Petitioner controverted the claim on several grounds, one of which was that Respondent was an admittedly illegal alien who had secured employment by fraudulent means and was therefore not an employee for workers' compensation purposes as pre-empted by the provisions of the I.R.C.A. 8 U.S.C.S. §§ 1324a and c(a)(2) and the provisions of 8 C.F.R. § 274a, being the regulations implemented by the attorney general of the United States pursuant to I.R.C.A. 8 U.S.C.S. § 1324a.

In the initial award, the Georgia State Board of Workers' Compensation found:

> (8) The employer argues that because the claimant is an illegal alien who misrepresented her status to the employer, she cannot be viewed as a true employee of Continental and, thus, that her claim for Title 34 benefits is barred. I am unaware of any case law or statute supporting this theory. Indeed, the opinion in *Dynasty Sample Company v. Beltran*, 224 Ga. App. 90 (1996) is basically contrary to it. Accordingly, I conclude as a matter of law that this defense is not viable.[1]

Petitioner appealed from that award to the Appellate Division of the Georgia State Board of Workers' Compensation, which entered an award affirming the award of the Administrative Law Judge and adopting his findings.[2]

As required by law, Petitioner then appealed to the Superior Court of the county in which the alleged accident occurred, Bartow County, Georgia. That court, after briefs and argument of counsel, found as follows:

> The Employee/Claimant in this case is admittedly an illegal alien. The Employer contends that the Employee/Claimant is not a legal "employee" pursuant to the Federal Code of Regulations. As such the Employer contends that the Employee cannot receive benefits . . . The issue of an illegal alien obtaining Workers' Compensation benefits is not completely new. In fact, the Georgia Court of Appeals in *Dynasty Sample Company v. Beltran*, 224 Ga. App. 90 (1996) held that an illegal alien may be entitled to Workers' Compensation

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[1] Award of Administrative Law Judge of Georgia State Board of Workers' Compensation (dec'd August 4, 2003); A-12, ¶ 8.

[2] Award of Appellate Division of Georgia State Board of Workers' Compensation (dec'd October 28, 2003); A-20.

> benefits. There does not appear to be any cases which have considered the applicability of the Federal Code of Regulations, but this Court finds that the Federal Code of Regulations does not preclude the Employee/Claimant's entitlement to Workers' Compensation benefits under Georgia Law.[3]

Within the time provided by law, Petitioner applied for and received permission from the Georgia Court of Appeals to pursue an appeal of the award of the Georgia State Board of Workers' Compensation and the order of Bartow County, Georgia Superior Court. The judgment of the Georgia Court of Appeals was entered on September 13, 2004, and the court held as follows:

> THEREFORE, the question before this court is whether the *Immigration Reform and Control Act of 1986 N3 (IRCA), which prohibits the knowing hiring of illegal aliens and the use of fraudulent documents to obtain employment, and the corresponding federal regulation N4 preempt state law for employment purposes relating to workers' compensation. We hold they do not.*[4]

After entry of the judgment of the Georgia Court of Appeals, Petitioner applied to the Georgia Supreme Court for a writ of certiorari, which was denied on February 21, 2005.[5] Petitioner's motion for reconsideration of the denial

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[3] Final Order of Judge of Bartow County Superior Court (dec'd January 26, 2004); A-23.

[4] *Continental Pet Technologies, Inc. v. Palacias*, 269 Ga. App. 561; 604 S.E. 2d 629 (2004); A-1.

[5] Decision of Supreme Court of the State of Georgia (dec'd February 21, 2005); A-25.

of the petition for a writ of certiorari to the Georgia Supreme Court was denied on March 28, 2005.[6]

On April 4, 2005, Petitioner filed with the Georgia Court of Appeals its notice of intention to petition for certiorari to the Supreme Court of the United States.[7]

ARGUMENT

I. Introduction.

As a result of this Court's decision in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137, 122 S. Ct. 1275, 152 L. Ed. 2d 271 (2002), the question of whether an illegal alien can be an employee for the purpose of obtaining workers' compensation benefits under statutes of any one of the United States has emerged as a leading issue.

In post-*Hoffman* Georgia, there are at least three decisions discussing the status of an illegal alien claiming workers' compensation benefits, all of which have been decided in favor of the illegal alien.[8] None of these decisions, however, has dealt directly with the threshold issue – whether or not Respondent can actually be considered an "employee," since a contractual relationship is rendered void and unenforceable under Georgia law by virtue of

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[6] Decision of Supreme Court of the State of Georgia (dec'd March 28, 2005); A-26.

[7] Petitioner's Notice of Intention to Petition for Certiorari to the Supreme Court of the United States (filed April 4, 2005); A-27.

[8] *Wet Walls, Inc. v. Ledezma*, 598 S.E. 2d 60 (2004); *Continental Pet v. Palacias, supra*; *Earth First Grading v. Gutierrez*, 606 S.E. 2d 332 (2004).

Respondent's fraudulent and criminal procurement of a position with Petitioner in violation of the provisions of I.R.C.A. Any contrary interpretation by the Georgia courts is unconstitutional as an attempted definition of an illegal alien as an employee is governed by the provisions of I.R.C.A.

Certiorari should be granted in this case so that the promise of workers' compensation benefits, which include both weekly benefits in lieu of lost wages and medical benefits, are no longer an enticement to illegal aliens to fraudulently obtain employment, as did Respondent, thereby circumventing the stated policy of Congress in the I.R.C.A.

It is uncontroverted that Respondent knowingly presented fraudulent documentation to Petitioner in order to secure employment with Petitioner. Given the ease with which fraudulent documents are obtained, as evidenced by the testimony in the workers' compensation hearing in this case, the problem can be resolved by this Court's specifically addressing the issue and directing the many state jurisdictions to follow the immigration policies set out by Congress in the I.R.C.A.

For the compelling reasons set out above, this Court should grant the petition and vacate the judgment below.

II. The Georgia Court of Appeals Erred in Failing to Find That an Illegal Alien Cannot Be an Employee for Workers' Compensation Purposes, Because Such Status Is Prohibited by I.R.C.A., Which Preempts State Law.

A. The Georgia courts and courts in other states have denied preemption based upon various invidious rationales.

The Georgia Court of Appeals held in *Palacias*:

> [T]hat federal law does not preempt Georgia law on the question of whether or not an illegal alien may receive workers' compensation benefits for employment as defined by O.C.G.A. § 34-9-1. Since this statute defines employee as "every person in the service of another under any contract of hire or apprenticeship," "every person" would necessarily include illegal aliens . . .

Palacias, supra, 604, 631.

The Georgia Court of Appeals conveniently ignored the portion of the definition of employee in O.C.G.A. § 34-9-1, which states: "Every person in the service of another under *any contract of hire* . . . " [Emphasis supplied.] Georgia contract law provides that a contract of employment that directly involves the infraction of a civil statute not enacted for the purpose of raising revenue and where such infraction is penalized by fine or imprisonment or both, such contract is void and unenforceable. *Couch v. Blackwell & Assoc., Inc.*, 258 S.E. 2d 552 (1979), citing *Southern Flower and Grain Co. v. Smith*, 120 S.E. 2d 36 (1923). As held by this Court in *Hoffman*:

> IRCA – unlike the maritime statutes, the bankruptcy code, or the INA – not only speaks directly

> to matters of employment but expressly criminalizes the only employment relationship at issue in this case.

Hoffman, supra, 151 n. 5.

The eligibility of Respondent to be an employee was the central issue in determining whether or not she could be a legitimate employee of Petitioner, given her status as an illegal alien whose ability to be an employee was preempted by the provisions of I.R.C.A. Respondent, having knowingly acquired fraudulent documents and using those documents to deceive Petitioner into extending an offer of employment, has no status upon which to contend that there is a contractual relationship of employer/employee so as to satisfy the requirements of Georgia law. Since Respondent was unable to enter into a valid contract of employment, she therefore had no status upon which to claim workers' compensation benefits under Georgia law.

B. By enacting the I.R.C.A., Congress has preempted the field with respect to the employment status of illegal aliens.

While it is clear that the I.R.C.A. as passed did not contain an express provision for preemption, preemption nonetheless occurs:

> When Congress intends federal law to "occupy the field," state law in that area is preempted. [Cite omitted.] . . . And even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with the federal statute . . . [Cite omitted.] . . . We will find preemption where it is impossible for a private party to comply with both state and federal law

> . . . [Cites omitted.] . . . and where "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" . . . [Cite omitted.] . . . What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects . . . [Cites omitted.] . . . "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished – if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect – the state law must yield to the regulation of Congress within the sphere of its delegated power."[9]

The holding of the Court in *Hoffman*, leaves little doubt but that Congress intended to occupy the field of the employment status of illegal aliens:

> . . . As we have previously noted, IRCA "forcefully" made combating the employment of illegal aliens central to "the policy of immigration law." [Cite omitted.] It did so by establishing an extensive "employment verification system," § 1324a(a)(1), designed to deny employment to aliens who (a) are not lawfully present in the United States or (b) are not lawfully authorized to work in the United States, § 1324a(h)(3) . . .

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[9] *Stephen P. Crosby, Secretary of Administration and Finance of Massachusetts, et al. v. National Foreign Trade Counsel*, 530 U.S. 363, 372-373, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000).

> Similarly, if an employer unknowingly hires an unauthorized alien, or if the alien becomes unauthorized while employed, the employer is compelled to discharge the worker upon discovery of the worker's undocumented status. [Cite omitted.] Employers who violate IRCA are punished by civil fines ... [Cite omitted.] ... and may be subject to criminal prosecution ... [Cite omitted.] ... IRCA also makes it a crime for an unauthorized alien to subvert the employer verification system by tendering fraudulent documents. § 1324c(a). It thus prohibits aliens from using or attempting to use "any forged, counterfeit, altered, or falsely made document" or "any document lawfully issued to or with respect to a person other than the possessor" for purposes of obtaining employment in the United States. §§ 1324c(a)(1)-(3). Aliens who use or attempt to use such documents are subject to fines and criminal prosecution. 18 U.S.C. § 1546(b) ... Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations ... Congress has expressly made it criminally punishable for an alien to obtain employment with false documents. There is no reason to think that Congress nonetheless intended to permit backpay where but for an employer's unfair labor practices, an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities ...

Hoffman, 535 U.S. 147-149.

In the face of enactment of the I.R.C.A. by Congress and the express provisions for prohibition of employment of illegal aliens that made such illegal aliens subject to criminal prosecution should they fraudulently obtain employment, it strains credulity to understand the "distinctions" employed by the Georgia Court of Appeals in *Palacias, supra*, as well as the opinions of other state courts cited for supporting authority.[10]

Further, the belief by the Georgia state courts that they have been able to successfully carve a niche from the I.R.C.A. with respect to workers' compensation laws was dealt another blow by the United States Supreme Court in *Alberto R. Gonzalez v. Angel McClary Raich*, Case No. 03-1454, 205 U.S. Lexis 4656 (decided June 6, 2005). In *Gonzalez*, the Court held:

> [L]imiting the activity to marijuana possession and cultivation "in accordance with state law" cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal powers over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants . . . "

Gonzalez, id. at 50.

The issues in *Gonzalez* are parallel to the issues of the employment status of illegal aliens seeking to hide behind

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[10] *Safeharbor Employer Svcs. I v. Velazquez*, 860 So. 2d 984, 986 (Fla. 2003); *Correa v. Waymouth Farms*, 664 N.W. 2d 324, 329 (Minn. 2003); *The Reinforced Earth Co. v. Workers' Comp. Appeal Bd. (Astudillo)*, 810 A. 2d 99, 104-106 (Pa. 2002).

the protection of state courts. Illegal aliens should no more be protected by state law definitions of "employees" for workers' compensation purposes than should personal cultivators of prohibited substances be protected under the cloak of state law.

CONCLUSION

Respondent committed a federal crime when she obtained and tendered to Petitioner fraudulent identification documents indicating falsely that she was legally within the United States and was legally qualified to obtain employment with Petitioner. Since Respondent obtained her employment with Petitioner by virtue of criminal activity, under Georgia law she could not enter into a valid contract of employment with Petitioner and therefore could not fulfill the statutory requirement of O.C.G.A. § 34-9-1.

Any attempt by the Georgia Court of Appeals and the Georgia State Workers' Compensation Board to interpret the workers' compensation laws of Georgia so as to require Petitioner to pay workers' compensation benefits to Respondent is unconstitutional in that to require Petitioner to pay such benefits to Respondent, an illegal alien, in violation of the provisions of I.R.C.A. would subject Petitioner to criminal sanctions.

Petitioner respectfully requests that the Court inquire into and grant its petition for a writ of certiorari to the Court of Appeals of Georgia and that the Court reverse the decision of the Court of Appeals of Georgia.

Dated: Atlanta, Georgia, June 15, 2005.

Respectfully submitted,

WARNER R. WILSON, JR.
Georgia State Bar No. 769400
Attorney for Petitioner

WILSON & EPSTEIN LLC
1850 North Tower
235 Peachtree Street
Atlanta, GA 30303
404-739-5000
404-739-5002 fax

CONTINENTAL PET TECHNOLOGIES, INC. v. PALACIAS.

A04A1491.

COURT OF APPEALS OF GEORGIA

269 Ga. App. 561; 604 S.E.2d 627; 2004 Ga. App. LEXIS 1225

September 13, 2004, Decided

COUNSEL: *Wilson & Epstein, Warner R. Wilson, Jr.*, for appellant.

Burdine & Brown, Thomas F. Brown II, Claxton & Claxton, Darcy S. Duval, for appellee.

JUDGES: BLACKBURN, Presiding Judge. Smith, C. J., Andrews, P. J., Johnson, P. J., Eldridge, Mikell and Adams, JJ., concur. Ruffin, P. J., Barnes, Miller, Ellington and Phipps, JJ., concur fully and specially.

OPINION BY: BLACKBURN

OPINION:

Blackburn, Presiding Judge.

Continental PET Technologies, Inc. (Continental) appeals the affirmation by the superior court of an award of benefits to Juana Sandoval Palacias (Palacias) by the State Workers' Compensation Board. Continental contends that because of Palacias's illegal immigrant status, the trial court erred in finding the existence of an employer/employee relationship. We disagree and affirm.

The factual findings of the Appellate Division of the State Board of Workers' Compensation must be affirmed

by the superior court and by this Court when supported by any evidence. *Ga.-Pacific Corp. v. Wilson.*[1] Viewed in a light most favorable to the decision of the Board, the evidence shows that Palacias was injured on the job while working for Continental. She had been illegally in the United States since 1994 and had worked for and been paid by Continental in a full-time capacity for the five years prior to her accident. She had originally used fraudulent documents to secure her position as a janitor for Continental.

Continental denied her initial claim for workers' compensation coverage for medical expenses and for lost wages. Following a hearing, an administrative law judge (ALJ) determined that Palacias was injured in the course of her employment with Continental, and the ALJ directed Continental to pay Palacias workers' compensation benefits. Finding this decision was supported by a preponderance of competent and credible evidence, the Board adopted the award as its own, which ruling was subsequently affirmed by the superior court. The lone enumeration of error is that the superior court erred in failing to reverse the decision of the Board.

1. Continental first argues that Palacias is barred from seeking workers' compensation benefits under Georgia law because federal law makes it unlawful to employ an illegal alien and therefore any employment contract between Continental and Palacias was void. Based on this premise, Continental argues that Palacias was never an employee and that therefore Continental cannot be liable

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[1] *Ga.-Pacific Corp. v. Wilson*, 240 Ga. App. 123, 124-125(1) (522 SE2d 700) (1999).

for workers' compensation benefits for the injury suffered by Palacias.

Georgia's Workers' Compensation Act provides that, excepting circumstances not applicable here, an employee includes "every person in the service of another under any contract of hire or apprenticeship."[2] This broad definition would include illegal aliens. Therefore, the question before this Court is whether the Immigration Reform and Control Act of 1986[3] (IRCA), which prohibits the knowing hiring of illegal aliens and the use of fraudulent documents to obtain employment, and the corresponding federal regulations,[4] preempt state law for employment purposes relating to workers' compensation. We hold they do not.

Preemption is a doctrine which ousts a State or other governmental entity from the exercise of police power in an area in which the power of federal government is, by law or by implication, preeminent. *Owen v. City of Atlanta.*[5] "The preemption doctrine is rooted in the Supremacy Clause and grows from the premise that when state law conflicts or interferes with federal law, state law must give way." (Punctuation omitted.) *Ga. Public Svc. Comm. v. CSX Transp.*[6]

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[2] OCGA § 34-9-1(2).

[3] 8 USCS §§ 1324a; 1324c.

[4] 8 CFR § 274a.12.

[5] *Owen v. City of Atlanta,* 157 Ga. App. 354, 356 (277 SE2d 338) (1981), aff'd, *City of Atlanta v. Owen,* 248 Ga. 299 (282 SE2d 906) (1981), cert. denied, 456 U. S. 972 (102 S. Ct. 2235, 72 L. Ed. 2d 846) (1982).

[6] *Ga. Public Svc. Comm. v. CSX Transp.,* 225 Ga. App. 787, 788(2) (484 SE2d 799) (1997).

"Whether federal statutes or regulations preempt state law is a question of congressional intent." (Punctuation omitted.) *Gentry v. Volkswagen of America.*[7] "Congress may express its intent to preempt state law: (1) by expressly defining the extent of preemption; (2) by regulating an area so pervasively that an intent to preempt the entire field may be inferred; and (3) by enacting a law that directly conflicts with state law." (Punctuation omitted.) *Wet Walls v. Ledezma.*[8]

Continental does not argue that Congress has expressly preempted the law in this area nor that the IRCA directly conflicts with Georgia's law on workers' compensation. Indeed, when considering the IRCA, *Wet Walls v. Ledezma* recently concluded that "there is no express preemption or directly conflicting law" that would preclude Georgia from awarding workers' compensation benefits to an illegal alien. *Id.* at 687(1).

Rather, Continental argues only that "Congress has regulated the field of the status of illegal aliens so extensively as to make clear its intent to control the employment status of those persons. . . . [T]here is a strong implication that Congress intended to have sole determination as to the inability of illegal aliens to attain employee status in this country."

Although the IRCA and accompanying regulations address in detail the hiring of undocumented aliens, they do not purport to intrude into the area of what protections

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[7] *Gentry v. Volkswagen of America,* 238 Ga. App. 785, 787(2) (521 SE2d 13) (1999).

[8] *Wet Walls v. Ledezma,* 266 Ga. App. 685, 686-687(1) (598 SE2d 60) (2004).

a State may afford these aliens. Nothing in the IRCA or accompanying regulations hints at a desire to deny workers' compensation benefits to injured employees, whether undocumented or otherwise. The Florida District Court of Appeals specifically held that the IRCA does not "so thoroughly occupy the field as to require a reasonable inference that Congress left no room for states to act." *Safeharbor Employer Svcs. I v. Velazquez.*[9]

Finally, *Wet Walls v. Ledezma* held that "although this is an issue of first impression in Georgia, other states that have addressed this issue have concluded there is no conflict between IRCA and a state's workers' compensation statutes that prohibits an illegal alien from receiving benefits." *Id.* at 687(1). Indeed, the Minnesota Supreme Court has held:

> As written, the IRCA does not prohibit unauthorized aliens from receiving state workers' compensation benefits generally. . . . The focus of the IRCA is on preventing employers from hiring unauthorized aliens. Aside from the prohibition on tendering fraudulent documents, the IRCA does not prohibit unauthorized aliens from seeking or accepting employment in the United States. The IRCA is not aimed at impairing existing state labor protections. . . . [W]e conclude that the IRCA was not intended to preclude the authority of states to award workers' compensation benefits to unauthorized aliens.

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[9] *Safeharbor Employer Svcs. I v. Velazquez*, 860 S2d 984, 986 (Fla. Dist. Ct. App. 2003).

(Citations omitted.) *Correa v. Waymouth Farms.*[10] See *The Reinforced Earth Co. v. Workers' Comp. Appeal Bd. (Astudillo)*[11] (Pennsylvania: neither the IRCA nor public policy preempts workers' compensation awards to illegal aliens).

These holdings are consistent with the intent of the IRCA. The Connecticut Supreme Court noted that "[t]he primary purpose of the [IRCA] was to establish procedures that inhibit the employment of undocumented workers and to punish employers who knowingly offer jobs to those workers." *Dowling v. Slotnik.*[12] Inasmuch as the goal of the IRCA is to reduce the incentives for employers to hire illegal aliens, that goal would be subverted by allowing employers to avoid workers' compensation liability for work-related injuries to those employees since such would provide employers with a financial incentive to hire illegal aliens. Id. Thus, *Dowling v. Slotnik* concluded that "the [IRCA] does not preempt, either expressly or impliedly, the authority of the states to award workers' compensation benefits to undocumented aliens." Id. at 405 (II) (B).

Continental cites to the U.S. Supreme Court case of *Hoffman Plastic Compounds v. Nat. Labor Relations Bd.*[13] for the proposition that awarding workers' compensation benefits would contravene the purposes of the IRCA. *Hoffman* held that the policy of the IRCA does prohibit the National Labor Relations Board from employing the

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[10] *Correa v. Waymouth Farms*, 664 NW2d 324, 329 (Minn. 2003).

[11] *The Reinforced Earth Co. v. Workers' Comp. Appeal Bd. (Astudillo)*, 570 Pa. 464, 810 A2d 99, 104-106 (Pa. 2002).

[12] *Dowling v. Slotnik*, 244 Conn. 781, 712 A2d 396, 410-411 (III) (B) (Conn. 1998).

[13] *Hoffman Plastic Compounds v. Nat. Labor Relations Bd.*, 535 U.S. 137 (122 S. Ct. 1275, 152 L. Ed. 2d 271) (2002).

nontraditional federal remedy of awarding of backpay to illegal immigrants who were the subject of National Labor Relations Act (NLRA) violations. Id. at 151, 122 S.Ct. 1275. Other more "traditional remedies" under the NLRA were sufficient to effectuate national labor policy. Id. at 152, 122 S.Ct. 1275. Based on this language, at least two state jurisdictions have concluded that under *Hoffman*, labor protections other than backpay are available to illegal aliens, and that therefore neither *Hoffman* nor the IRCA intended to prohibit the awarding of workers' compensation benefits to illegal aliens. See *Safeharbor Employer Svcs. I*, supra at 986 (Florida); *Correa*, supra at 329 (Minnesota). We agree.

(1) Based on the above, we hold that federal law does not preempt Georgia law on the question of whether or not an illegal alien may receive workers' compensation benefits for employment as defined by OCGA § 34-9-1. Since this statute defines employee as "every person in the service of another under any contract of hire or apprenticeship," "every person" would necessarily include illegal aliens. OCGA § 34-9-1(2). And, "[e]xcept in plain and indisputable cases the question of whether one is an employee within the meaning of the Workmen's Compensation Act, and whether an injury received by such person was received in the course of the employment, are questions of fact for decision by the [B]oard." *Employers Ins. Co. of Alabama v. Bass.*[14] As stated earlier, a Board finding of fact that is supported by any evidence is conclusive and

[14] *Employers Ins. Co. of Alabama v. Bass*, 81 Ga. App. 306 (1) (58 SE2d 516) (1950).

binding upon the superior court and the Court of Appeals. *Abdul-Hakim v. Mead School, &c., Products.*[15]

It is undisputed that Palacias performed services for Continental such that she would be considered an employee under OCGA § 34-9-1(2). The ALJ found that she was an employee and was injured and eligible for Title 34 benefits during this employment. The Board adopted these findings, which decision was affirmed by the superior court. As there was evidence to support the findings, we must affirm.

2. Continental next argues that the fraud perpetrated by Palacias in using false papers to obtain employment vitiates her right to recover workers' compensation benefits for her injuries. We rejected this argument in *Dynasty Sample Co. v. Beltran,*[16] where the employer failed to show a causal connection between the employee's misrepresentation and the workers' compensation injury suffered by the employee. Since there is no showing of such a causal connection here either, we similarly reject the argument.

Judgment affirmed. Smith, C. J., Andrews, P. J., Johnson, P. J., Eldridge, Mikell and Adams, JJ., concur. Ruffin, P. J., Barnes, Miller, Ellington and Phipps, JJ., concur fully and specially.

CONCUR BY: MILLER

CONCUR:

---

[15] *Abdul-Hakim v. Mead School, etc., Products,* 267 Ga. App. 121, 123 (1) (598 SE2d 808) (2004).

[16] *Dynasty Sample Co. v. Beltran,* 224 Ga. App. 90, 92 (479 SE2d 773) (1996).

Miller, Judge, concurring fully and specially.

While I concur fully in the majority opinion, I write separately to underscore the importance of our holding that Palacias is an "employee" for purposes of Georgia's *Workers' Compensation Act*. As the majority correctly holds, this is not a case of federal preemption. Indeed, this is a case that is squarely governed by the clear and well-defined provisions of the *Workers' Compensation Act*. Despite the fact that Palacias is an illegal alien, and even though she originally used fraudulent documents to obtain the janitorial position in which she was injured, the longstanding policy in Georgia under the Act mandates that Palacias be treated no differently than any other employee who is injured on the job.

When *the Act* was first passed in 1920, the definition of the essential term "employee" read in relevant part:

> (b) Employee shall include *every person, including a minor in the service of another* under any contract of hire or apprenticeship, written or implied, except one whose employment is not in usual course of the trade, business, occupation or profession of the employer. . . . *Minors are included even though working in violation of any child labor law or other similar statute, provided that nothing herein contained shall be construed as repealing or altering any such law or statute. . . .*

Ga. L. 1920, pp. 167, 168. While later revisions to this statute moved the language concerning child workers further down in the paragraph and thus a few more lines away from the language defining employees as "every person under any contract of hire or apprenticeship," both

parts of the statute have survived virtually intact over the years. See OCGA § 34-9-1 (2).

From the moment this legislation was enacted, the General Assembly anticipated that employers might hire illegal workers and intended that such workers be covered by its workers' compensation law. In 1920, the legislature was most concerned that such workers might well be children working in violation of the child labor laws recently passed. Today, it may be more likely that the worker has entered the United States in violation of federal immigration laws. As to *all* illegal workers, however, the State's fundamental policy – implied in the original statute's emphasis on child workers, stated outright in cases thereafter, and codified at last in 1994 – remains paramount today: that the Act "be construed reasonably and liberally" for the purpose of extending its "beneficent provisions . . . to every class of workman and employee that can fairly be brought within [them]." *Lee v. Claxton,* 70 Ga. App. 226, 228 (28 SE2d 87) (1943); *Malcom v. Sudderth,* 98 Ga. App. 674, 685 (106 SE2d 367) (1958); OCGA § 34-9-23, Ga. L. 1994, p. 887, § 4 (allowing liberal construction "only for the purpose of bringing employers *and* employees within the provisions of this chapter and to provide protection for *both*") (emphasis supplied).

Under the current statutory scheme, employees cannot sue employers for injuries sustained on the job. Likewise, employers cannot plead the illegal nature of the employment contract after an employee whom they have included for underwriting purposes on their workers' compensation policy has been injured, regardless of whether or not they knew that the worker was illegal. The purpose of workers' compensation insurance is to provide

payment after a worker is injured on the job, and in conjunction with the Act eliminates questions as to the relative knowledge or fault of employers and employees, either at the time of injury or at the time the employment relationship was created. *Slaten v. Travelers Ins. Co.*, 197 Ga. 1, 2-3 (28 SE2d 280) (1943); *Travelers Ins. Co. v. Southern Elec.*, 209 Ga. App. 718, 719 (1) (434 SE2d 507) (1993).

When we hold that Palacias is entitled to workers' compensation benefits despite her illegal status and her fraudulent obtainment of employment, then, we do only what the *Workers' Compensation Act* has long required: to enforce its social contract between the employer, the person who retains the benefit of an employee's labor, and the employee, now injured on the employer's job. To allow an employer to reap the benefit of an employee's services (even when such services are rendered by an illegal alien), without holding the employer responsible for the payment of workers' compensation benefits when the employee is injured on the job, would break the social contract between the employer and its employee and undermine the entire purpose of Georgia's *Workers' Compensation Act*.

I am authorized to state that Presiding Judge Ruffin, Judge Barnes, Judge Phipps and Judge Ellington join in this opinion.

[SEAL]

STATE BOARD OF WORKERS' COMPENSATION

104 East 5th Avenue
Rome, Georgia 30161
(706) 295-6781

Claim No: 927-80-7794	Case of: Juana Sandoval
Accident Date: 2/14/02	Date: August 4, 2003
Juana Sandoval 416 N. Tennessee Street Cartersville, GA 30120	Employee
Continentao PET Technologies, Inc. 230 Industrial Park Road, N.E. Cartersville, GA 30121-5044	Employer
AIG Claims Services 2550 Northwinds Parkway, Suite 500 Alpharetta, GA 30004	Insurer for Continental
Thomas F. Brown 2160 Satellite Blvd, Suite 100 Duluth, GA 30097	Counsel for Employee
Warner R. Wilson, Jr. 1850 North Tower, 235 Peachtree Street Atlanta, GA 30303	Counsel for Employer/Ensurer

The above-styled case came on for hearing before the undersigned administrative law judge on June 6, 2003, The record closed at the hearing, and time was provided for the submission of briefs subsequent to the filing of the transcript.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an all-issues case wherein the employee seeks the payment of temporary total disability benefits from July 11, 2002 forward and the payment of medical benefits. She also requests that Dr. Duncan Wells be designated as the authorized treating physician.

The stipulations of the parties show that there is no issue as to the employee's performing work for Continental as of the alleged accident date, coverage, venue, or an average weekly wage of $414.12.

The employer/self-insurer denies that the employee suffered any work-related injury and similarly denies that she has been economically disabled in consequence of any such injury. It also asserts that this claim is barred due to a failure to provide timely notice of an alleged injury as required by O.C.G.A. §34-9-80. In addition, Continental maintains that the claimant is an illegal alien who misrepresented her status when she was hired. It asserts that, accordingly, she was not a true employee of Continental and, thus, is not entitled to Title 34 benefits.

After review of all admissible evidence in conjunction with the applicable law, I find and conclude as follows:

(1) The claimant was performing janitorial work at Continental as of February 14, 2002.

(2) The greater weight of the conflicting evidence indicates that, while lifting a trash can in the course of performing her duties on that day, she injured her left shoulder. This injury may have represented the aggravation of a pre-existing condition. However, it is well-settled that such a work-related aggravation constitutes a new and compensable injury for Title 34 purposes. See

O.C.G.A. §34-9-1(4). In reaching this determination, I have noted the employer's reliance on the deposition testimony of Dr. Brunette, who treated the claimant, and who stated that his records indicate that Ms. Sandoval provided him with a history of the injury which suggested that it was not work-related. However, the doctor's testimony on this point is rather vague in that he could not recall specifically what in the history indicated that the injury was not related to the work. Moreover, the claimant does not speak English and Dr. Brunette does not speak Spanish. Given this communication problem, it is not unlikely that the physician misunderstood what the claimant was attempting to impart to him regarding the origin of the shoulder pain. Further, the credible testimony of Ms. Amanda Wood, who was one of the claimants supervisors on February 14, 2002, reveals that, on that day, Ms. Sandoval made a gesture to her (rubbing her left shoulder) which Ms. Wood did not understand. I find that this was an attempt to advise her (Ms. Wood) that she had hurt her shoulder.

(3) The employee sought treatment from Dr. John Brunette beginning on March 4, 2002, but continued to work. However, when her condition did not improve, she went out of work on July 11, 2002 so that Dr. Brunette could perform surgery. The operation, a rotator cuff repair and arthroscopic subacromial decompression, took place shortly thereafter.

(4) The claimant has not returned to work since the surgery, and I find that a preponderance of the conflicting evidence, and especially the October 29, 2002 report of Dr. Duncan Wells, who performed an independent medical evaluation, establishes that Ms. Sandoval has never fully recovered from the compensable injury and continues to be restricted in her ability to labor because of it. Accordingly,

I find that she has been totally economically disabled relative to the Act since July 11, 2002.

(5) As noted above, supervisor Amanda Wood testified that the claimant made a gesture to her (rubbing her left shoulder) on February 14, 2002. Ms. Wood thought that the claimant might be attempting to inquire about the condition of another employee who had hurt his shoulder earlier inasmuch as she (the claimant) mentioned his nickname while making the gesture. However, I find that the claimant, being unable to verbally communicate with Ms. Wood, who does not speak Spanish, was attempting to inform her that she had injured her own shoulder. I further find that this attempt, while imperfect, was sufficient to put Continental on notice of a possible work-related injury and, thus, to provide it the opportunity to investigate if it so wished. Therefore, I conclude that this claim is not barred by a failure of notice. See *Schwartz v. Greenbaum* 236 GA. 476 (1976).

(6) Inasmuch as the employer, having been given effective notice of a possible work-related injury, did not provide assistance in the selection of an authorized physician and subsequently controverted the claim in its entirety. I conclude as a matter of law that the employee was vested with the right to seek reasonable treatment from a physician of her choice. See O.C.G.A. §34-9-201, Board Rule 201(b) and *Hardee's v. Bailey* 180 GA. App. 332 (1986). Therefore, the employer/self-insurer is responsible for the payment of all those medical bills incurred of Dr. Brunette which are reasonable in amount and reflective of treatment made reasonably necessary in consequence of the injury.

(7) Pursuant to Board Rule 201(b), the claimant has a right to make one change of physician. Accordingly, her request that Dr. Duncan Wells be designated as the authorized treating physician is hereby granted.

(8) The employer argues that because the claimant is an illegal alien who misrepresented her status to the employer, she cannot be viewed as a true employee of Continental and, thus, that her claim for Title 34 benefits is barred. I am unaware of any case law or statute supporting this theory. Indeed, the opinion in *Dynasty Sample Company v. Beltran* 224 GA. App. 90 (1996) is basically contrary to it. Accordingly, I conclude as a matter of law that this defense is not viable.

AWARD

In consequence of the foregoing, the employer/self-insurer is directed to pay temporary total disability benefits to the employee at the weekly rate of $276.08 for the period July 11, 2002 until such time as they are terminated or modified in accordance with law.

The employer/insurer is also directed to pay all those medical bills which have been incurred by the claimant and which are reasonable in amount and reflective of treatment made reasonably necessary in consequence of the compensable shoulder injury. This portion of the order is interlocutory so that, should a dispute arise as to the reasonableness of a given bill or treatment, any party may petition the board for a ruling.

Dr. Duncan Wells is hereby authorized to provide treatment to the claimant relative to the compensable injury. The employer/self-insurer shall be responsible for the

payment of necessary and reasonable expenses incurred as a result of this treatment. Dr. Wells is directed to mail the original of any medical records to the employer/self-insurer. Counsel for the claimant is directed to see that Dr. Wells is furnished with a copy of this order.

IT IS SO ORDERED, this 4th day of August, 2003.

STATE BOARD OF WORKERS' COMPENSATION

/s/ R. David Whittenburg
R. DAVID WHITTENBURG
Administrative Law Judge

[SEAL]

STATE BOARD OF WORKERS' COMPENSATION

104 East 5th Avenue
Rome, Georgia 30161
(706) 295-6781

Claim No: 927-80-7794	Case of: Juana Sandoval
Accident Date: 2/14/02	Date: August 4, 2003
Juana Sandoval 416 N. Tennessee Street Cartersville, GA 30120	Employee
Continentao PET Technologies, Inc. 230 Industrial Park Road, N.E. Cartersville, GA 30121-5044	Employer
AIG Claims Services 2550 Northwinds Parkway, Suite 500 Alpharetta, GA 30004	Insurer for Continentao
Thomas F. Brown 2160 Satellite Blvd, Suite 100 Duluth, GA 30097	Counsel for Employee
Warner R. Wilson, Jr. 1850 North Tower, 235 Peachtree Street Atlanta, GA 30303	Counsel for Employer/Ensurer (Continentao)

Counsel for the employee has submitted a fee contract for approval. A fee of 25% of the recovery, applicable only to income benefits for 400 weeks, unless sooner terminated, is reasonable and fair. The recovery subject to attorney's fees is $276.08 per week, commencing July 11, 2002 forward.

AWARD

The employee is directed to pay employee's attorney 25% of any income benefits received to date for the period shown above.

The employer/insurer are directed to pay employee's attorney 25% of any income benefits due or hereafter becoming due for the period shown above, to be deducted from the employee's benefits.

The attorney's fee applies only to 400 weekly benefits, unless sooner terminated. Medical expenses are not subject to attorneys fees.

IT IS SO ORDERED, this 4th day of August, 2003.

STATE BOARD OF WORKERS' COMPENSATION

/s/ R. David Whittenburg
R. DAVID WHITTENBURG
Administrative Law Judge

[SEAL]

STATE BOARD OF WORKERS' COMPENSATION

270 Peachtree Street, N.W.
Atlanta, GA 30303-1299

Claim Number: 927-80-7794	Case of: Juana Sandoval
Accident Date: 02/14/02	Date: October 28, 2003

Juana Sandoval 416 N. Tennessee Street Cartersville, GA 30120	Employee
Continentao PET Technologies, Inc. 230 Industrial Park Road, N.E. Cartersville, GA 30121-5044	Employer/Self-Insurer
AIG Claims Services 2550 Northwinds Parkway, Suite 500 Alpharetta, GA 30004	Servicing Agent
Thomas F. Brown 2160 Satellite Boulevard, Suite 100 Duluth, GA 30097	Counsel for Employee
Warner R. Wilson, Jr. 1850 North Tower, 235 Peachtree Street Atlanta, GA 30303	Counsel for Employer/Self-Insurer

This appeal by the employer/self-insurer is before the Appellate Division for review of an award by judge Whittenburg, dated August 4, 2003. The employer/self-insurer argues the administrative law judge erred in finding the employee suffered an injury arising out of and in the course of the employee's employment with the employer. No cross-appeal has been filed by the employee. This

appeal was argued orally before the Appellate Division on October 22, 2003, and the employer/self-insurer has filed a brief in support of their position. After a review of the record as a whole as well as the arguments presented, the Appellate Division now adopts the findings of fact, conclusions of law, and award of Judge Whittenburg as its own.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the record as a whole, we find that the administrative law judge was, in this case, in the best position to determine the credibility and weight of the evidence in the record. See *Johnson v. Weyerhaeuser Company*, 231 Ga. App. 627, 629, 499 S.E.2d 916 (1998); *Metro Interiors, Inc. v. Cox*, 218 Ga. App. 396, 398, 461 S.E.2d 570 (1995). Consequently, as to the enumerations of error and arguments presented by the employer/self-insurer, we find no error with the administrative law judge's award.

Therefore, the findings of the administrative law judge in this matter are hereby accepted by the Appellate Division as such findings are supported by a preponderance of competent and credible evidence contained within the record on review. *See* O.C.G.A. §34-9-103(a). The Appellate Division adopts the conclusions of law of the administrative law judge as such reflect an appropriate application of the Act to the findings of fact.

AWARD

Based upon the foregoing, the Appellate Division adopts the award of Judge Whittenburg, dated August 4, 2003, as its award.

IT IS SO ORDERED, this the 28th day of October, 2003. Concurring: Presiding Judge Carolyn C. Hall and Judge Larry Smith

STATE BOARD OF WORKERS' COMPENSATION

/s/ Viola S. Drew
Viola S. Drew
Judge
Appellate Division

:cm

IN THE SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA

JUANA SANDOVAL MACIAS, Employee/Claimant	:	CIVIL ACTION # 03-3545
vs.	:	
CONTINENTAL PET TECHNOLOGIES, INC., Employer/Self-Insurer	:	

FINAL ORDER

(Filed Jan. 26, 2004)

The above styled case came before this court on Thursday, January 22, 2004, for a hearing on the Employer's Appeal of the State Board of Workers' Compensation Award, and after hearing arguments of Counsel and reviewing the entire file on this matter, the Court makes the following findings:

The Employee/Claimant in this case is admittedly an illegal alien. The Employer contends that the Employee/Claimant is not a legal "employee" pursuant to the Federal Code of Regulations. As such the Employer contends that the Employee cannot receive benefits. The Employer also contends that the Employee/Claimant failed to carry the burden of proof required to support the finding of an accident arising out of her employment, and that the Employee/Claimant failed to give the required notice of the accident.

The issue of an illegal alien obtaining Workers' Compensation benefits is not completely new. In fact, the Georgia Court of Appeals in *Dynasty Sample Company vs. Beltran*, 224 Ga. App. 90 (1996) held that an illegal alien may be entitled to Workers' Compensation benefits. There does not appear to be any cases which have considered the applicability of the Federal Code of Regulations, but this Court finds that the Federal Code of Regulations does not preclude the Employee/Claimant's entitlement to the Workers' Compensation benefits under Georgia Law. The other issues raised by the Appeal are governed by the "any evidence rule".

THEREFORE, IT IS HEREBY THE ORDER OF THIS COURT that the Employer's appeal is denied and the award of the State Board of Workers' Compensation is affirmed.

SO ORDERED this 26th day of January, 2004.

/s/ Shepherd L. Howell
SHEPHERD L. HOWELL, JUDGE
SUPERIOR COURTS – CHEROKEE
JUDICIAL CIRCUIT

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

DATE: February 21, 2005

Warner R. Wilson Jr.
WILSON & EPSTEIN
1850 North Tower
235 Peachtree Street
Atlanta GA 30303

Case No. S05C0209

CONTINENTAL PET TECHNOLOGIES, INC. v.
JUANA SANDOVAL PALACIAS

COURT OF APPEALS CASE NO. A04A1491

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sherie M. Welch, Clerk

SUPREME COURT OF GEORGIA

Case No. S05C0209 Atlanta, March 28, 2005

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

CONTINENTAL PET TECHNOLOGIES, INC.
v. JUANA SANDOVAL PALAC

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Sherie M. Welch, Clerk

IN THE COURT OF APPEALS
STATE OF GEORGIA

CONTINENTAL PET, TECHNOLOGIES INC.,	)	
Appellant,	)	Court of Appeals
v.	)	Case No. A04A1491
JUANA SANDOVAL PALACIAS,	)	
Appellee.	)	

NOTICE OF INTENTION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

(Filed Apr. 4, 2005)

Warner R. Wilson, Jr.
Wilson & Epstein LLC
1850 North Tower
235 Peachtree Street
Atlanta, Georgia 30303
404.739.5000
404.739.5002 fax

Attorney for Appellant

IN THE COURT OF APPEALS
STATE OF GEORGIA

CONTINENTAL PET, TECHNOLOGIES INC.,	)	
Appellant,	)	Court of Appeals
v.	)	Case No. A04A1491
JUANA SANDOVAL PALACIAS,	)	
Appellee.	)	

NOTICE OF INTENTION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

COMES NOW APPELLANT CONTINENTAL PET TECHNOLOGIES, INC. ("Appellant") and, pursuant to Court of Appeals Rule 38 2(b), within twenty days after denial by the Supreme Court of Georgia of Appellant's motion for reconsideration of the denial of Appellant's petition for certiorari in the Supreme Court of Georgia, hereby gives notice of Appellant's intent to petition for certiorari to the Supreme Court of the United States.

Respectfully submitted this 1st day of April, 2005.

/s/ Warner R. Wilson
Warner R. Wilson, Jr.
Georgia State Bar No. 769400
Attorney for Appellant

Wilson & Epstein LLC
1850 North Tower
235 Peachtree Street
Atlanta, GA 30303
404.739.5000
404.739.5002 fax

IN THE COURT OF APPEALS
STATE OF GEORGIA

CONTINENTAL PET, TECHNOLOGIES INC.,	)	
Appellant,	)	Court of Appeals
v.	)	Case No. A04A1491
JUANA SANDOVAL PALACIAS,	)	
Appellee.	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of the within and foregoing **NOTICE OF INTENTION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES** by depositing same in the United States mail, with adequate postage thereon, to:

Thomas F. Brown II, Esquire
Burdine & Brown
2160 Satellite Boulevard
Suite 100
Duluth, GA 30097-4074

Darcy S. DuVal, Esquire
Claxton & Claxton, LLC
180 Interstate North Parkway
Suite 115
Atlanta, GA 30339

This 1st day of April, 2005.

/s/ Warner R. Wilson
Warner R. Wilson, Jr.
Georgia State Bar No. 769400
Attorney for Appellant

Wilson & Epstein LLC
1850 North Tower, 235 Peachtree Street
Atlanta, GA 30303
404.739.5000; 404.739.5002 fax